DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health
Eunice Kennedy Shriver National
Institute of Child Health and
Human Development
Bethesda, Maryland 20892

December 3, 2015

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: November 17, 2015 Ex Parte Meeting on Interpretation of the Telephone Consumer Protection Act

Dear Ms. Dortch:

On November 17, 2015, representatives of the National Institutes of Health (NIH), met with staff from the Federal Communications Commission's (FCC) Consumer and Government Affairs Bureau (CGB) to discuss how the Telephone Consumer Protection Act (TCPA) may restrict telephone calls made during the conduct of federally funded research.

The following CGB staff attended the meeting: Mark Stone, Deputy Bureau Chief, Consumer and Government Affairs Bureau; Beau Finley, Legal Advisor, CGB; Kurt Schroeder, Chief, Consumer Policy Division (CPD), CGB; John B. Adams, Deputy Chief, CPD, CGB; and Kristi Thornton, Attorney, CPD, CGB. The following NIH staff attended the meeting: Jaclyn M. Crouch, MPA, Special Assistant for Policy, Planning, and Evaluation, Office of Behavioral and Social Sciences Research (OBSSR); Ned Culhane, Office of Legislative Policy and Analysis, Office of the Director; John G. Haaga, Ph.D., Acting Director, Division of Behavioral and Social Research, National Institute on Aging; Lisa Kaeser, J.D., Director, Office of Legislation and Public Policy, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development; and Erica L. Spotts, Ph.D., Health Scientist Administrator, OBSSR.

Dr. Haaga began the meeting by describing the NIH's mission to improve the public's health, which is carried out by 27 Institutes and Centers. He outlined the NIH's concerns about the impact of the FCC's interpretation of the TCPA statute on research funded at academic institutions across the country as restrictions on the use of telephone equipment may have a deleterious effect on NIH-funded research that use such equipment. For example, the Health and Retirement Study has been funded for many years; the data are used by many other Federal agencies in their work, such as use by the Social Security Administration for research on disability and retirement trends. To carry out studies such as the Health and Retirement Study, data that are representative of the U.S. population must be obtained and individuals in rural and underserved areas need to be contacted. It is cost-effective for initial screening contacts to be made using equipment capable of random digit dialing. Dr. Haaga also made the point that NIH-funded research is supported using a variety of mechanisms, including grants, contracts, and

cooperative agreements. However, the majority of NIH funding is dispersed through grants at academic institutions nationwide. Dr. Haaga provided examples of each of these.

The NIH staff present pointed out further differences between its relationship with contractors and grantees, and described the multiple levels of review and scrutiny afforded to NIH-funded research. Grantees receive NIH funding to carry out research that has been heavily scrutinized in several levels of peer review; only the very best research is being funded. In addition, research involving human subjects generally receives thorough ethical review by an Institutional Review Board. Moreover, even if a grant is funded for up to five years, the lead investigators must submit annual progress reports that are carefully monitored by NIH program scientists. NIH supports research that carries out its mission of improving the public's health. This mission, those of the component Institutes and Centers, and some specific research directions and studies all have been specifically mandated by Congress. For example, the Adolescent Health Study was mandated in the National Institutes of Health Revitalization Act of 1993 (P.L. 103-43), and is still collecting data on its cohort of participants. This study utilizes equipment that has random dialing capabilities.

In contrast, the FCC staff confirmed that there is no specific legislative history of the TCPA that indicates that Congress meant for researchers to be included among the persons prohibited from using random digit dialing. Ms. Kaeser added an example of a major initiative that is about to be funded by the NIH, the Environmental influences on Child Health Outcomes (ECHO) study, another congressionally authorized study, where the study design includes the potential for recontacting cohorts of individuals who had participated in previously funded NIH studies.

FCC staff asked clarifying questions, such as whether the NIH had ever terminated a grant or contract, and sought more examples of research that could be affected if grantees or other NIH-funded entities could not use equipment capable of random digit dialing, which was acknowledged to be an efficient approach for conducting certain types of research. They also stated that they had been contacted by other parties on this matter, and suggested that putting the NIH's views in writing for the FCC docket would be helpful during consideration of this issue. The NIH staff were then informed that this had been an ex parte meeting, and that a summary of the meeting needed to be submitted in the docket.

The NIH staff closed the meeting by reiterating that the research supported by the NIH is authorized by Federal law, with the results of this research helping to inform policy and carry out its mission to improve the public's health.

Submitted by:

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